GUAN WEE KEANG

v.

GAN AH TER

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[ORIGINATING SUMMONS NO. F 291 OF 1985]
16 JANUARY 1986

LAND LAW: *Private caveat - Who can lodge - Section 323(1)(a), (b), (c) of National Land Code - Triable issues - Balance of convenience - Whether caveat should be removed.*

The deceased (who is the original proprietor here) alleged that she transferred the land to the applicant on the understanding that he was to hold it in trust for him and his two brothers in equal shares. The deceased then sought a declaration that the transfer to the applicant had been rescinded and accordingly a return of the lands to herself or alternatively, a declaration that the applicant was really holding the lands in trust for the 3 beneficiaries. In the meantime, the deceased lodged a private caveat and an order was made on 30 August 1985, granting the relevant order. The applicant applied for removal of the caveat. The question here is whether the deceased was in law entitled to lodge the private caveat.

Held:

[1] Under s. 323(1) of the National Land Code, paras. (b) and (c) do not apply because the facts alleged in the statutory declaration verifying the application for entry of the private caveat do not reveal that the caveat had been lodged either by a beneficiary entitled under any trust or by any minor having a claim to a beneficial entitlement. Only para (a) has any application in the present proceedings.

[2] On the basis of *Eng Mee Yong v. V. Letchumanan* [1980] AC 331, the onus is upon the respondent to satisfy the Court that he can make out a claim under one of the four limbs of s. 323(1)(a) of the National Land Code.

[3] Having regard to the close familial relationship of the parties in this case, there are sufficient grounds to satisfy the Court that there are triable issues which can only be decided at the trial.

[4] Having regard to the fact that the substratum of the suit would disappear if the caveat were lifted and the property sold, the balance of convenience dictates that the caveat should continue.

[Order of 30 August 1985 confirmed. Application dismissed with costs.]

Case referred to:
Eng Mee Yong v. V. Letchumanan [1980] AC 331

Legislation referred to:
National Land Code 1965, s. 323(1)

For the plaintiff/applicant - S.S. Ong with S.Y. Kok; M/s. Mah-Kok & Din
For the defendant/respondent - Chandran Nair; M/s. Thevin Chandran Siva & Jamal

JUDGMENT

LC Vohrah J:

The only question I have to consider is whether the deceased was in law entitled to lodge the private caveat No. 23231/82 Vol. 19 Folio 65 dated 22 November 1982. If she was not then I must set aside the order I made on 30 August 1985 and direct that the private caveat be removed.

The starting point in these proceedings must be s. 323(1) of the National Land Code which reads:

> The persons and bodies at whose instance a private caveat may be entered are-
>
> (a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;
>
> (b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and
>
> (c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

As the private caveat was lodged initially by the deceased as the original proprietor who has transferred the title of the land in question to her youngest son, the applicant, allegedly in trust for the applicant and the deceased's two other sons, I accept the submission of Counsel for the applicant that paragraphs (b) and (c) do not apply because the facts alleged in the statutory declaration verifying the application for entry of the private caveat (see Exhibit 'GWK-1', Enclosure 2) do not reveal that the caveat had been lodged either by a beneficiary entitled under any trust or by any minor having a claim to a beneficial entitlement. I agree with Counsel therefore that only paragraph (a) has any application in the present proceedings. Counsel has also submitted that there are in fact four limbs to paragraph (a), namely

(i) a claim to a title to alienated land;
(ii) a claim to a registrable interest in alienated land;
(iii) a claim to a right to such a title; and
(iv) a claim to a right to such a registrable interest.

I think this is a correct interpretation of paragraph (a) and on the basis of *Eng Mee Yong v. V. Letchumanan* [1980] AC 331, the onus is upon the respondent to satisfy the Court that he can make out a claim under one of these four limbs. In the statutory declaration the deceased alleged that she transferred the land to the applicant on the understanding that he was to hold it in trust for him and his two brothers in equal shares. The deceased on 7 January 1983 filed an action seeking, *inter alia*, declarations that the transfer of this land together with another piece of land to the applicant had been rescinded, that the lands were held in trust for the deceased's three sons in equal shares and that each of the sons were entitled to a one-third share from the proceeds of the sale of these lands (see Exhibit 'GWK-2', Enclosure 2). The basis of this action was the averments by the deceased that these lands were transferred into the name of the applicant for the sake of convenience because she was then very ill and the applicant had orally agreed to hold the lands in trust for himself and his two brothers in equal shares at a time when her other two sons were not readily available to execute the necessary documents for the completion of the transfer into their names as well, that no monetary consideration in fact passed and the amount stated merely reflected the fair value of the land, that the applicant had failed despite repeated requests by

the deceased to take steps to have the respective shares transferred to his two brothers and that the deceased had by letter dated 12 November 1982 repudiated the agreement to transfer the lands to the applicant and had also rescinded all her subsequent acts or deeds which had made the applicant the registered proprietor of the lands. In other words the deceased sought a declaration that the transfer to the applicant had been rescinded and accordingly a return of the lands to herself or, alternatively, a declaration that the applicant was really holding the lands in trust for the three beneficiaries. The question therefore I have to consider is whether an original grantor on the basis of the facts above-averred, were I to accept them *prima facie*, had sufficient grounds in fact and law under paragraph (a) to lodge the caveat. The issue as to whether the deceased as the mother of the applicant and the original grantor had in fact repudiated the transfer to the applicant and rescinded all her subsequent acts or deeds which had enabled the applicant to become the registered proprietor of the lands can only be decided at the trial of Civil Suit No. F 8 of 1983 and if her averments as to the repudiation of the transfer and rescission of her acts are proven, it is clear that she has a claim to title to the land in question. In my opinion, having regard to the close familial relationship of the parties in this case, there are sufficient grounds to satisfy the Court that there are triable issues. Having regard further to the fact that the substratum of the suit would disappear if the caveat were lifted and the property sold at the contract price of RM120,000 (which is far below the open market value of RM320,000), I think the balance of convenience dictates that the caveat should continue. I accordingly confirm the order I made on 30 August 1985 dismissing the application with costs.

Also found at [1986] 1 CLJ 557